

potential shock hazard to the shaker operator. For this condition, the inspector wrote a section 104(a), S&S citation charging a violation of 30 CFR 56.12-25. The violation was considered S&S because the operator had to turn the switch off and on several times a day.

Respondent did not deny that the condition alleged existed but attempted to show there was another power ground that went back to the substation through an underground cable. The only photograph of the location, however, clearly showed only three, not four, wires coming from the substation (PX-10). In the absence of a showing that a power ground wire was connected to the disconnect switch, I found this violation did, in fact, occur and that it was significant and substantial. The gravity was, of course, serious but negligence was only modest. After considering the other criteria, I found, and affirm, that the amount of the penalty warranted is that proposed, namely, \$126.

Citation No. 2521468

On September 4, 1985, Inspector Grabner also observed a single unguarded 110 volt incandescent light bulb in the surge tunnel. Usually, the tunnel was lit by fluorescent lighting located above the conveyor belt. The light bulb was temporary until the fluorescent lighting in the area could be repaired. The tunnel was about 5 feet, 6 inches high and the light bulb was suspended approximately 5 feet, 3 inches above the walkway. Miners passing through the tunnel would have to bend forward to walk through the tunnel and under or around the light bulb. The inspector wrote a 104(a), S&S citation charging a violation of 30 CFR 56.12-34 for failure to guard the light bulb. The inspector considered the violation S&S because he believed that the bulb could easily be struck by miners traveling the area and that such contact could possibly have caused "burns, shock or cuts from broken glass." A penalty of \$126 was proposed.

There was no dispute about the existence of the condition charged. Respondent offered a video tape of the area which lent support to its argument that the bulb was located to the side of the walkway, not directly above it. I found a preponderance of the evidence showed the bulb was in sufficiently close proximity to the walkway that it could be struck by an individual passing through but that the likelihood of a burn, shock or cut from broken glass was so remote, speculative, and unlikely that the S&S finding must be vacated. This was predicated on the fact that miners passing through the area would be wearing hard hats and sufficient